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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,007	01/29/2004	Fletcher Morgan	X-9450	2017

615 7590 12/20/2005

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EXAMINER	
ALEXANDER, REGINALD	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/766,007	MORGAN, FLETCHER	
	Examiner	Art Unit	
	Reginald L. Alexander	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *19-21* is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *9/04, 1/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 10 is objected to because of the following informalities: There are two periods at the end of claim 10. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what structural arrangement is being described at line 3 of claim 9.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4-7, 9 and 10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,973,872. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are an obvious variation of the patented claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

There is disclosed in Johnson an apparatus, comprising: a rack 30; a plurality of bowl assemblies 31 mounted on the rack; a lip (upper flat rim) extending around the periphery bowl assemblies; a cover member including an open bowl 32 with a surrounding skirt 35; and means 28 which could fit over the skirt and lip of the bowls.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Ellner.

Ellner discloses the use of a wire rack 111 having support members 131 extending therebetween for supporting molding elements.

It would have been obvious to one skilled in the art to modify the rack of Johnson with that taught by Ellner and construct it of wire, in order to provide an alternative construction of the rack.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Savage '352.

Savage discloses that it is known in the art to provide a non-stick coating on the surface of a molding device.

It would have been obvious to one skilled in the art to provide the device of Johnson with the non-stick coating taught in Savage, in order to prevent food items from sticking to the device.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Wheaton.

Wheaton discloses the use of a fluted insert mounted within a molding bowl member.

It would have been obvious to one skilled in the art to provide the device of Johnson with the insert disclosed in Wheaton, in order to construct a food product having a varied shape.

Claims 11 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Savage '352 and Bassett.

Savage discloses plural semi-spherical molding bowls mounted to a frame. Bassett discloses the use of holes within a surrounding skirt of an inner molding bowl.

It would have been obvious to one skilled in the art to modify the bowls of Johnson with that taught by Savage and provide a semi-spherical shape, in order to vary the shape of the finished food product. Additionally, it would have been obvious to one skilled in the art to provide the bowl skirt of Johnson with the holes taught in Bassett, in order to allow steam to escape during heating of the device.

Savage discloses that it is known in the art to provide a non-stick coating on the surface of a molding device.

It would have been obvious to one skilled in the art to provide the device of Johnson with the non-stick coating taught in Savage, in order to prevent food items from sticking to the device.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 11 above, and further in view of Wheaton.

Wheaton discloses the use of a fluted insert mounted within a molding bowl member.

It would have been obvious to one skilled in the art to provide the device of Johnson, as modified by Savage and Bassett, with the insert disclosed in Wheaton, in order to construct a food product having a varied shape.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 11 above, and further in view of Ellner.

Ellner discloses the use of a wire rack 111 having support members 131 extending therebetween for supporting molding elements.

It would have been obvious to one skilled in the art to modify the rack of Johnson, as modified by Savage and Bassett, with that taught by Ellner and construct it of wire, in order to provide an alternative construction of the rack.

Allowable Subject Matter

Claims 19-21 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Jacobson is cited for its disclosure of the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reginald L. Alexander
Primary Examiner
Art Unit 1761

rla
December 13, 2005